

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN FLAMER,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
FRANK GREEN, ASSISTANT	:	No. 95-CV-2523
WARDEN SPIGERILLI, WARDEN	:	
GEORGE HILL, C.I.D. DEPT.,	:	
Defendants.	:	

MEMORANDUM-ORDER

GREEN, S.J.

October , 1997

Presently before the Court is Defendant C.I.D. Department's Motion to Dismiss Plaintiff's Amended Complaint pursuant to Rule 12(b)(6) for failure to state a claim and Plaintiff's Answer thereto. By order dated December 10, 1996, this Court dismissed this action as to Defendants Frank Green, Assistant Warden Spigerilli and Warden George Hill. The only remaining defendant named in the Amended Complaint is C.I.D. Department. For the reasons set forth below, Defendant C.I.D. Department's Motion is granted.

A motion to dismiss a complaint for failure to state a claim may not be granted unless it appears from the face of the complaint that the plaintiff can establish no set of facts which would entitle him to relief. Conley v. Gibson, 335 U.S. 41, 45-46, 78 S. Ct. 99, 102 (1957). The facts must be taken as true and reviewed in the light most favorable to the plaintiff. Id.

A municipality may be liable under § 1983 only if the plaintiff can show that an employee of the municipality violated his or her civil rights as a result of a municipal policy or practice. Williams v. Borough of West Chester, Pa., 891 F.2d

458, 467 (3d Cir. 1989) (citing Monell v. Department of Social Services of City of New York, 436 U.S. 658, 98 S. Ct. 2018 (1978)). "Absent the conscious decision or deliberate indifference of some natural person, a municipality, as an abstract entity, cannot be deemed to have engaged in a constitutional violation by virtue of a policy, a custom, or a failure to train." Simmons v. City of Philadelphia, 947 F.2d 1042, 1063 (3d Cir. 1991), cert. denied, 503 U.S. 985, 112 S. Ct. 1671 (1992). In order for a municipality to be directly liable under § 1983, the plaintiff must show that the municipality's policymakers implemented a municipal policy reflecting a deliberate indifference to constitutional rights. See Fagan v. City of Vineland, 22 F.3d 1283, 1292 (3d Cir. 1994).

For purposes of § 1983, Defendant C.I.D. Department is a municipal agency and subject to suit under § 1983 as would be the municipality itself. Therefore, C.I.D. Department cannot be liable to the Plaintiff under § 1983 absent some authorized intentional violation of the Plaintiff's constitutional rights by employees of C.I.D. Department or evidence of a policy of C.I.D. Department reflecting C.I.D. policymaker's deliberate indifference to constitutional rights. Because Plaintiff has failed to name any employees of C.I.D. Department in his Amended Complaint, Plaintiff's action against Defendant C.I.D. Department fails to state a claim based on a violation of the Plaintiff's rights by employees of C.I.D. Department. Plaintiff has also failed to state any facts supporting a claim that Defendant

C.I.D. Department, through its policies or deliberate indifference, directly violated the Plaintiff's constitutional rights. Therefore, pursuant to Rule 12(b)(6), plaintiff's complaint is dismissed against Defendant C.I.D. Department for failure to state a claim.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN FLAMER,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
FRANK GREEN, ASSISTANT	:	No. 95-CV-2523
WARDEN SPIGERILLI, WARDEN	:	
GEORGE HILL, C.I.D. DEPT.,	:	
Defendants.	:	

ORDER

AND NOW, this day of October, 1997 upon consideration of Defendant C.I.D. Department's Motion to Dismiss Plaintiff's Amended Complaint and Plaintiff's Response thereto, IT IS HEREBY ORDERED that Defendant's Motion is GRANTED and Plaintiff's Amended Complaint is DISMISSED WITHOUT PREJUDICE as to Defendant C.I.D. Department.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.